

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 4366 of 2006 (O&M)

Date of Decision: 27.09.2007

Punjab State Electricity Board and others

...Appellant

Versus

Vasu Dev

....Respondent

Present : Mr.Y.P.Khullar, Advocate

for the appellant.

The present Regular Second Appeal has been filed against the judgment and decree dated 10.12.2005 passed by the learned appellate Court vide which the judgment and decree dated 19.2.2005 passed by the learned trial Court, has been reversed and suit filed by the plaintiff-respondent has been ordered to be decreed. The plaintiff brought a suit for declaration claiming that order bearing Endst. No.14505-06 dated 14.3.2000 and order endst.bearing No.12767-70/CC.183/Sub. dated 15.9.2000 were illegal, null and void and without jurisdiction as the same were passed by the person who was not competent to pass any such order. Para 11 of the judgment passed by the learned appellate Court reads as under:-

“It is significant to note that the Chief Engineer is the Punishing Authority of the plaintiff. In para 2 of the plaint, the plaintiff has specifically and categorically alleged that defendant No.3 i.e. The Chief Engineer (D), Border, P.S.E.B., Ajnala Road, Amritsar, is his punishing and appointing authority. In the written statement, it has been alleged that para No.2 of the plaint is a matter of record. As such, the defendants have not disputed that the Chief Engineer is the punishing authority of the plaintiff. Furthermore, Raj Kumar (D.W.1), during the course of his cross-examination, has also admitted

the fact that the disciplinary authority of the plaintiff is defendant No.3 i.e. Chief Engineer and Deputy Chief Engineer is below the rank of Chief Engineer. The perusal of the impugned order dated 14.3.2000 indicates that the same has been passed by the Addl. Under Secretary (Establishment) in the office of the Chief Engineer (Storage & Disposal), PSEB, Patiala. Similarly, the impugned order dated 15.9.2000 has been passed by the Under Secretary/Establishment, in the office of the Chief Engineer (D), Border, PSEB, Ajnala Road, Amritsar. The impugned orders have not been passed by the concerned Chief Engineers themselves. Rather, the same have been passed on their behalf by the officials subordinate to them. It has been mentioned in the orders that the same are being passed with the approval the Chief Engineers. In this regard, it may be mentioned here that the punishing authority cannot delegate its authority to pass a penal order, on its subordinate. Moreover, there is nothing to suggest that any such authority was delegated to the Officers who passed these orders. In these circumstances, the impugned orders cannot be said to have been passed by the competent authority, i.e. the Chief Engineer, who is the punishing and appointing authority of the plaintiff. As such, the impugned orders cannot be sustained in the eyes of law and have to be termed as illegal, null and void.”

Learned counsel appearing on behalf of the appellant has not been able to controvert the finding recorded by the learned lower Appellate Court as reproduced above. Learned counsel for the appellant contended that in fact, the order passed by Deputy Chief Engineer was with the consent of Chief Engineer, therefore, it was valid order. However, he has failed to show any delegation of power or competence of the Chief Engineer to delegate the powers to Deputy Chief Engineer as is sought to be pleaded.

The next contention of learned counsel for the appellant was that as remedy of appeal was available to the plaintiff-respondent under the regulation, therefore, the Civil Court had no jurisdiction to entertain and try the present suit. This plea also cannot be accepted as no provision of statute has been shown which bars the jurisdiction of the Civil Court.

Otherwise also, no issue on jurisdiction was framed by the courts below. Therefore, it is not open to the appellant to raise said plea for the first time in Regular Second Appeal.

No ground is made out which may call for interference by this Court in this Regular Second Appeal.

Dismissed

[Vinod K.Sharma]

Judge

27.9.2007

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